

FILED
ABCP 1
31 PM 1:58
CATHY S. CATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES

In the Circuit Court, Kanawha County, West Virginia

I. CASE STYLE:

Plaintiff(s)/Petitioner(s)

Case # K-0-1953

STATE OF WEST VIRGINIA
ex rel. PATRICK MORRISEY,
ATTORNEY GENERAL

Judge Baile

vs.

Defendant(s)/Respondent(s)

Days to
Answer

Type of Service

STOCKERT-SIZEMORE, INC.
d/b/a STOCKERT-SIZEMORE FUNERAL HOME
225 Flatwoods Corner Road
Flatwoods, West Virginia 26621

30

Personal

TIMOTHY S. SIZEMORE,
Individually and as Former Owner of
Stockert-Sizemore Funeral Home,
18 Penwood Avenue
Nitro, West Virginia 25143

20

Personal

Original and ___ copies of complaint furnished herewith.

(Continued On Next Page)

PLAINTIFF: STATE OF WEST VIRGINIA ex rel. PATRICK MORRISEY, ATTORNEY GENERAL DEFENDANTS: STOCKERT-SIZEMORE, INC., et al.	CASE NUMBER:
---	---------------------

II. TYPE OF CASE:

TORTS	OTHER CIVIL	

Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	<input checked="" type="checkbox"/> Miscellaneous Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes No ☒

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): N/A

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

YES NO ☒

IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities
 Interpreter or other auxiliary aid for the hearing impaired
 Reader or other auxiliary aid for the visually impaired
 Spokesperson or other auxiliary aid for the speech impaired
 Other: _____

Attorney Name: Michael M. Morrison, Assistant Attorney General
 (State Bar No. 9822)

Firm: State of West Virginia, Attorney General's Office

Address: Post Office Box 1789, Charleston, WV 25326-1789

Telephone: (304) 558-8986

Representing:

☒ Plaintiff Defendant

Cross-Complainant Cross-Defendant

Dated: 10/31/14

Signature

Pro Se

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
ex rel. Patrick Morrissey,
Attorney General,

Plaintiff/Petitioner,

v.

CIVIL ACTION NO. H-C-1953

STOCKERT-SIZEMORE, INC.
d/b/a STOCKERT-SIZEMORE FUNERAL HOME; and
TIMOTHY S. SIZEMORE, Individually and as Former Owner of
Stockert-Sizemore Funeral Home,

Defendants/Respondents.

COMPLAINT FOR PERMANENT INJUNCTION AND RELATED RELIEF

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter “Consumer Act”) and the West Virginia Preneed Funeral Contracts Act, W. Va. Code § 47-14-1, *et seq.* (hereinafter “Preneed Act”). The State of West Virginia ex rel. Patrick Morrissey, Attorney General (hereinafter “State”), has reason to believe that the Stockert-Sizemore Funeral Home, Inc., and Timothy Sizemore (collectively hereinafter “Defendants”) have violated the Consumer Act and the Preneed Act, and brings this action to enjoin and restrain the Defendants from selling and providing preneed funeral goods and services without a license or certificate of authority issued by the State, and to secure redress for aggrieved consumers. The State seeks permanent injunctive relief, investigative costs, damages, restitution, civil penalties, and attorney’s fees.

PARTIES

1. Plaintiff, State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General is authorized to bring this action pursuant to West Virginia Code § 46A-1-101, *et seq.*, and specifically West Virginia Code § 46A-7-102, § 46A-7-108, § 46A-7-110, § 46A-7-111, and § 47-14-12.

2. Defendant, Stockert-Sizemore, Inc. is a West Virginia corporation, and had its principal place of business located at 225 Flatwoods Corner Road, in Flatwoods, West Virginia. Upon information and belief, Stockert-Sizemore, Inc. operated as Stockert-Sizemore Funeral Home (“S-SFH”).

3. Defendant, Timothy S. Sizemore (“Sizemore”), is a West Virginia resident whose last known address is 18 Penwood Avenue, Nitro, West Virginia and was the owner and operator of Defendant Stockert-Sizemore Funeral Home.

JURISDICTION AND VENUE

4. This Court has jurisdiction to hear this matter pursuant to Article VI, Section 6 of the West Virginia Constitution and W. Va. Code § 51-2-2.

5. Venue is proper in this Court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(f).

RELEVANT PERIOD OF TIME

6. The Defendants have engaged in continuous violations of the Preneed Act and Consumer Act from at least 2008 until April 2013.

FACTS COMMON TO ALL CAUSES OF ACTION

7. The Defendant Sizemore had operated a funeral home business in Flatwoods, West Virginia, and had engaged in selling preneed funeral goods and services to West Virginia consumers by means of preneed funeral contracts¹, since at least 2006.

8. At all times relevant hereto, Defendant Sizemore had formulated, directed, and controlled the day-to-day business policies and practices of Defendant S-SFH.

9. No person may sell, make available, receive, hold, control, or manage any funds or other things of value tendered as payment on a preneed funeral contract (hereinafter “preneed contract”) unless such person has obtained a certificate of authority² (hereinafter “COA”) or renewal thereof from the Preneed Funeral Services Division of the Office of Attorney General (hereinafter “Preneed Unit”).

10. Every time a preneed contract is sold, the consumer is charged a \$20.00 contract recording fee. This fee, along with a copy of the contract, must be submitted to the Preneed Unit within ten (10) days of the contract’s execution.

11. Any payments made by a consumer purchasing a preneed contract must be deposited in a trust account or insurance policy by the COA holder, within thirty (30) days of receipt, to safeguard the funds until death.

¹ A “preneed funeral contract” is defined as any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, including a contract that is financed by the purchase of an insurance policy or annuity, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the contract beneficiary who is either named or implied therein. W. Va. Code § 47-14-2(12) (Emphasis added).

² A “certificate of authority holder” is defined as any person who sells, makes available, or provides preneed funeral contracts. W. Va. Code § 47-14-2(4).

12. Every time a preneed contract is serviced, the funeral home is required to file a death beneficiary report³ with the Preneed Unit, to account for how the preneed contract funds were spent.

13. COA holders must maintain accurate records of all their preneed contracts accounts, and make them available for inspection if so desired by the Preneed Unit.

14. In approximately 2006, the Defendants obtained a COA to sell and provide preneed contracts in the state of West Virginia. (*See* Affidavit of Ralph Laton, certified public accountant, auditor for the Preneed Unit, hereinafter “CPA Laton,” attached hereto as Exhibit A, and incorporated by reference herein).

15. On or about July 10, 2013, the State audited the preneed contracts accounts held by the Defendants, and discovered multiple violations of West Virginia law.

16. From the results of the audit conducted on July 10, 2013, CPA Laton prepared two (2) charts illustrating the affected consumers from the Defendants’ violations. (*See* charts prepared by Ralph Laton, CPA, auditor for the Preneed Unit, attached hereto as Exhibit B and C, and incorporated by reference herein).

17. As a result of the audit, CPA Laton identified multiple areas of violation and at least twelve (12) West Virginia consumers who were affected by Defendants’ conduct. (Exhibits A, B, and C).

18. The audit revealed that on at least ten (10) occasions, from seven (7) different consumers, Defendants accepted funds, totaling \$30,593.08, as advanced payment for funeral

³ A “Death Beneficiary Report” is a document prepared by a COA holder after servicing a preneed contract, which accounts for all expenditures and disbursements from the trust or other proceeds, justifies any increase in price, and explains any substitution of goods or services. *See*, W. Va. C.S.R. § 142-8-8.2.

arrangements *without* depositing the consumers' funds in a trust account or preneed insurance policy as required by law. (Exhibits A and B).

19. The audit also revealed eleven (11) preneed contracts that the Defendants had failed to record with the State within ten (10) days of executing the contracts, with appropriate fees, as required by statute. (Exhibits A, B, and C).

20. In November 2013, Stockert-Sizemore Funeral Home was foreclosed and the funeral home was sold at auction.

MISAPPROPRIATION OF FUNDS

21. The State repeats and realleges the allegations set forth in paragraphs 1 through 20 and in addition thereto, alleges the following:

22. The July 10, 2013 audit also revealed that Defendants accepted funds from seven (7) consumers as advanced payment for funeral arrangements without depositing the consumers' funds in a trust account or preneed insurance policy as required by law. (Exhibits A and B).

23. The seven (7) consumers that paid Defendants advanced payment for funeral arrangements were Laura Bright (\$2,100.02), Lela Creasy (\$1,300.00), Goldie Moats (\$1,500.00), Marilyn Murphy (\$8,696.53), Patricia Murphy (\$8,696.53), Dorothy Rhodes (\$7,100.00) and James Rexroad (\$1,200.00). (Exhibits A and B).

24. The audit revealed that Defendants received from the seven (7) consumers a total of \$30,593.08, in advanced funds for funeral arrangements, without depositing the consumers' funds in a trust account or preneed insurance policy as required by law. (Exhibits A and B).

UNREGISTERED PRENEED CONTRACTS

25. The State repeats and realleges the allegations set forth in paragraphs 1 through 24 and in addition thereto, alleges the following:

26. The audit also revealed that Defendants entered into eleven (11) preneed contracts with consumers without registering the contracts by submitting copies of the contracts or the appropriate fees to the Preneed Unit within ten (10) days as required by law. (Exhibits A, B, and C).

27. The eleven (11) consumers that entered into preneed contracts with Defendants that were not properly registered with the State were Laura Bright, Lela Creasy, Goldie Moats, Marilyn Murphy, Patricia Murphy, Dorothy Rhodes, Linda Dean, Agnes Douglas, Mick Ruth, Thelma Ratliff, and Mary White. (Exhibits B and C).

CAUSES OF ACTION

First Cause of Action

**(Failure to Place Consumers' Funds in Trust or Insurance Policy
Violates W. Va. Code § 47-14-5(a)(3), and is a per se Unfair or
Deceptive Act or Practice in Violation of W. Va. Code § 46A-6-104)**

28. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 27 and, in addition thereto, alleges the following:

29. West Virginia Code § 47-14-5(a)(3) mandates that:

[A]ll funds paid to or collected by any person as the result of a preneed contract shall, within thirty days after receipt thereof by such a person, be deposited in this state: (i) In the name of a trustee who is a contract seller, provider or person making the preneed funeral contract available, in a state or federally chartered and insured bank, savings institution, building and loan institution located in this state or in a state or federally chartered credit union located in this state; or (ii) under the terms of a trust instrument entered into with a national or state bank having trust powers or a trust company located in this state. In the event a preneed funeral

contract is funded by the purchase of an insurance policy or an annuity, the premiums paid on such insurance policy or annuity shall be deposited with an insurer licensed pursuant to the provisions of chapter thirty-three of this code.

30. The Defendants accepted funds from at least seven (7) West Virginia consumers in advance payments for preneed contracts, but failed to deposit the consumers' funds in a trust account or insurance policy. (Exhibit B).

31. The conduct of the Defendants in failing to deposit funds from the sale of preneed contract into a trust account or insurance policy violates West Virginia Code § 47-14-5(a)(3), and constitutes an unfair or deceptive act or practice, in violation of W. Va. Code § 46A-6-104.

**Second Cause of Action
(Omission of Material Fact, as Defined by
W. Va. Code § 46A-6-102 (7)(M),
Is an Unfair or Deceptive Act or Practice
In Violation of W. Va. Code § 46A-6-104.)**

32. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 31 and, in addition thereto, alleges the following:

33. West Virginia Code § 46A-6-104 provides that:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

34. West Virginia Code § 46A-6-102(7)(M) provides that:

Unfair methods of competition and unfair or deceptive acts or practices means and includes, but is not limited to . . . [t]he act, use or employment by a person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.

35. The Defendants sold preneed contracts to West Virginia consumers without disclosing that they were not depositing the consumers' advance payments in a trust account or insurance policy, as required by law. (Exhibit A).

36. By failing to inform a buyer of a preneed contract that Defendants were not depositing their payments in a trust account or insurance policy, the Defendants have omitted material facts during the course of a sale, which constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

**Third Cause of Action
(Failure to Submit Contracts and Pay Fees
Violates W. Va. Code § 47-14-8(f) and
is a per se Unfair or Deceptive Act or Practice
in Violation of W. Va. Code § 46A-6-104.)**

37. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 36 and, in addition thereto, alleges the following:

38. West Virginia Code § 47-14-8(f) mandates that:

Beginning on the first day of January, one thousand nine hundred, ninety-seven, the contract buyer shall pay a fee of twenty dollars to the contract seller. The contract seller is to forward such sum and a copy of the contract to the division within ten days after its execution.

39. The Defendants have failed to forward copies of their preneed contracts to the State within ten days of execution. (Exhibits A, B, and C).

40. The Defendants have failed to forward consumers' twenty-dollar fees to the State within ten days of executing preneed contracts. (Exhibits A, B, and C).

41. The Defendants' actions in failing to forward copies of their preneed contracts to the State and their requisite fees within ten days of execution violate W. Va. Code § 47-14-8(f), and constitute unfair or deceptive acts or practices, in violation of W. Va. Code § 46A-6-104.

**Fourth Cause of Action
(Failure to Maintain Accurate Records
Violates W. Va. Code 47-14-3(i)(1),
and Constitutes a per se Unfair or Deceptive Act
or Practice in Violation of W.Va. Code § 46A-6-104.)**

42. The State repeats and realleges the allegations set forth in paragraphs numbered 1 through 41 and, in addition thereto, alleges the following:

43. Pursuant to West Virginia Code § 47-14-3(i)(1),

The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts . . . and such other records as the division may require to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept for twelve months after the date of termination of the applicable preneed contract.

44. The Defendants failed to keep accurate accounts, books and/or records of all their transactions, with the result that the true location of consumers' advance payments could not be readily determined. (Exhibits A, B, and C).

45. By failing to keep accurate accounts, books, and/or records of their preneed contract transactions with West Virginia consumers, the Defendants violated W.Va. Code § 47-14-3(i)(1), which constitutes a per se Unfair or Deceptive Act or Practice in violation of W. Va. Code § 46A-6-104.

REQUEST FOR RELIEF

The State further requests that, upon a final hearing, this Court grant the following permanent relief:

1. An order permanently enjoining the Defendants from violating the Consumer Act and the Preneed Act;

2. An order forever prohibiting the Defendants from selling, making available and/or acting as the provider of any preneed funeral products or services in the State of West Virginia;
3. An order requiring the Defendants to refund all money they received from West Virginia consumers as advance payment for preneed contracts the Defendants have not performed, and refund all other money received from consumers as a result of the Defendants' violations of the Preneed Act and Consumer Act;
4. An order requiring Defendants to turn over all preneed contracts held by Defendants, and all funds incident thereto, to the State;
5. An order requiring the Defendants to produce any and all documents and records pertaining to any prepayment, or agreement to prepay, for funeral goods or services by any consumer prior to the death of the consumer or payment beneficiary;
6. An order requiring Defendants to cooperate with the State of West Virginia in transferring their preneed contracts to other funeral service providers;
7. An order prohibiting Defendants from transferring or conveying any real or personal property in his custody or control to any third party until this matter has been finally adjudicated;
8. An order requiring the Defendants to pay civil penalties to the State in the amount of \$5,000.00 per violation of the Preneed Act and the Consumer Act, pursuant to W. Va. Code § 46A-7-111, based on their willful and repeated conduct as set forth herein;
9. An order requiring the Defendants to pay punitive damages in the amount of three times the actual damages awarded in the judgment, pursuant to W. Va. Code § 47-14-12;
10. An order granting pre-judgment interest on all awards of refunds and civil penalties, pursuant to W. Va. Code § 56-6-29;

11. An order granting reimbursement of all investigation costs, court costs and attorney's fees, pursuant to W. Va. Code § 46A-7-108; and


12. Post-judgment interest, pursuant to W. Va. Code § 56-6-29.

The State further requests such other relief as the interests of justice may require.

Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
Attorney General, Plaintiff/Petitioner

By Counsel



MICHAEL M. MORRISON (WV #9822)
ASSISTANT ATTORNEY GENERAL
Consumer Protection Division
Post Office Box 1789
Charleston, West Virginia 25326-1789
Telephone: 304-558-8986
Facsimile: 304-558-0184

AFFIDAVIT

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

Ralph W. Laton, being first duly sworn, states as follows:

1. My name is Ralph W. Laton. I am over the age of twenty-one and have personal knowledge of all the facts contained herein.

2. I am a Certified Public Account, and I am an auditor for the Preneed Funeral Services Division (hereinafter "Division") at the Office of the Attorney General of the State of West Virginia.

3. As part of my duties, I audit sellers and providers of preneed funeral contracts ("preneed contracts") in the state of West Virginia, and I monitor compliance with the Preneed Funeral Contracts Act, W. Va. Code § 47-14-1 *et seq.* ("Preneed Act"), and the West Virginia Consumer Credit and Protection Act, W. Va. Code § 46A-1-101 *et seq.* ("WVCCPA").

4. As part of my duties, I am custodian of the records pertaining to the regulation of preneed contract sales, pursuant to the Preneed Act and the WVCCPA.

5. From January 2006 to November 2013 Stockert-Sizemore, Inc. DBA Stockert-Sizemore Funeral Home ("S-SFH") was a seller and provider of preneed contracts which listed its place of business as 225 Flatwoods Corner Road, in Flatwoods, West Virginia.

6. Timothy S. Sizemore ("Sizemore") is the president of S-SFH.

7. On July 1, 2013 Anthony Paletti ("Paletti") began managing the S-SFH with the intention of purchasing the funeral home.

**EXHIBIT
A**

8. In November 2013, Paletti purchased the funeral home and is operating under the name MVJSD, LLC DBA Stockert-Gibson-Peletti Funeral Home..

9. After beginning work at S-SFH, Paletti became suspicious of some of the preneed accounts and alerted me of his concerns.

10. On July 10, 2013, I audited the preneed contract accounts of S-SFH and determined that S-SFH had violated multiple provisions of the Preneed Act and the WVCCPA.

11. Including contracts discovered in the original audit, facts reveal that Sizemore failed to report a total eleven (11) consumers' contracts to the Division, including six (6) not deposited or registered.

12. Sizemore failed to deposit a total of \$30,593.08.

13. Of these same eleven (11) consumers' contracts, five (5) were not registered that were insurance assignments that no money was paid to S-SFH.

14. Facts also reveal that an additional payment of \$1,200.00 made to a previous registered preneed contract for James Rexroad was not deposited by Sizemore.

15. The \$1,200.00 made by Rexroad is included in the total amount of funds not deposited in a trust account or insurance.

This is my complete statement.

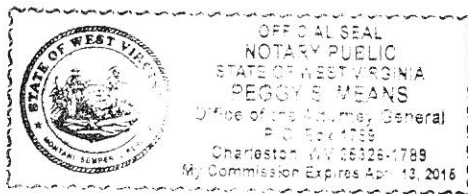
DATED: 10/28/14

Ralph W. Laton
Ralph W. Laton, CPA

Taken, subscribed and sworn to before the undersigned Notary Public in and for
the County and State aforesaid on this the 28th day of October, 2014.

My commission expires: April 13, 2015

Peggy S Means
Notary Public



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

NAME: Stockert-Sizemore Funeral Home

COA 071B

Misappropriations of Funds

Unregistered and Unfunded Preneed Contracts

	CONTRACT BENEFICIARY		CONTRACT DATE	CHECK/RECEIPT DATE	CHECK/RECEIPT AMOUNT	DEPOSITORY	PAYMENT TYPE
1	Bright	Laura M.		10/19/12	\$2,100.02		check # 246708
2	Creasy	Lela		3/1/08	\$1,000.00		cash
	Creasy	Lela		6/9/08	\$300.00		check # 489
3	Moats	Goldie		3/30/12	\$500.00		check # 1316
	Moats	Goldie		10/9/12	\$500.00		check # 1350
	Moats	Goldie		4/3/13	\$500.00		check # 1376
4	Murphy	Marilyn	3/5/10	11/5/09	\$8,696.53	NGL	check # 840
5	Murphy	Patricia	3/5/10	11/5/09	\$8,696.53	NGL	check # 842
6	Rhodes	Dorothy		7/8/11	\$7,100.00	NGL	check

Total \$29,393.08

Registered and Unfunded Preneed Contracts

	CONTRACT BENEFICIARY		CONTRACT DATE	CHECK/RECEIPT DATE	CHECK/RECEIPT AMOUNT	DEPOSITORY	PAYMENT TYPE
1	Rexroad	James		1/11/12	\$1,200.00	Forethought	check # 2921

Total \$1,200.00

Grand Total \$30,593.08

**EXHIBIT
B**

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

NAME: Stockert-Sizemore Funeral Home COA 071B

Unregistered Preneed Contracts

(No exchange of funds between consumers and Stockert-Sizemore Funeral Home)

	CONTRACT BENEFICIARY		CONTRACT DATE	CONTRACT AMOUNT	INSURANCE COMPANY
1	Dean	Linda	4/21/08	\$6,778.00	AIG
2	Douglas	Agnes	6/12/08	\$5,000.00	Appalachian Life
3	Mick	Ruth	1/19/12	\$5,000.00	JC Penny Life
4	Ratliff	Thelma	2/2/08	\$7,645.00	Mutual of Omaha
5	White	Mary	1/23/12	\$3,000.00	United of Omaha

EXHIBIT
C